

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA**

**LEE MEMORIAL HEALTH SYSTEM,**

**Plaintiff,**

**v.**

**Case No. 16-CA-001065**

**JOHN DOE and JANE DOE, as  
medical proxy for JOHN DOE,**

**Defendants.**

---

**ORDER GRANTING PLAINTIFF'S MOTION FOR  
TEMPORARY AND PERMANENT MANDATORY INJUNCTIVE RELIEF**

**THIS CAUSE** having come before the Court upon Plaintiff's Motion for Temporary and Permanent Mandatory Injunctive Relief and the Court having reviewed the relevant filings, heard oral argument and having held an evidentiary hearing on April 27, 2016, and being otherwise fully advised in the premises, finds as follows:

**FINDINGS AND CONCLUSIONS OF LAW**

1. John Doe is a patient at Lee Memorial Hospital, an acute care facility operated by Lee Memorial Health System, since April 15, 2015.
2. Lee Memorial Hospital is a public hospital with a public duty to provide acute care services to the citizens of Lee County, Florida.
3. John Doe is incapable of making medical decisions relating to his care.
4. Pursuant to Florida Statute §765.401, at all times relevant hereto, Jane Doe has been acting as John Doe's medical proxy and making medical decisions on his behalf.

5. John Doe has been ready for discharge from Lee Memorial Health System since April 21, 2015.

6. Available options for John Doe's discharge are to a long term care facility, his home or hospice.

7. The Plaintiff has sought placement for John Doe in 716 long term care facilities in the State of Florida.

8. Due to his medical and financial condition, there are very few facilities that will consider accepting John Doe and availability is very limited.

9. Since April 21, 2015, two appropriate facilities have had availability and were willing to take John Doe. When a facility becomes available, it is standard for the facility to only hold the bed for 24 hours.

10. Jane Doe refused placement in the two available long term care facilities.

11. Furthermore, Jane Doe is unwilling or unable to accept discharge to her home or hospice.

12. As a result of Jane Doe's refusal to accept discharge to an appropriate long term care facility, home or hospital, John Doe and Jane Doe, as Medical Proxy for John Doe, are committing a continuing trespass.

13. Injunctive relief is available in Florida to enjoin a continuing trespass. See Autozone Stores, Inc. v. Northeast Plaza Venture, LLC, 934 So.2d 670, 673 n. 1 (Fla. 2d DCA 2006); Florida Action Films, Inc. v. Green East #2, Ltd., 29 So.3d 471 (Fla. 3d DCA 2010); Overstreet v. Lamb, 128 So.2d 897, 900 (Fla. 1<sup>st</sup> DCA 1961).

14. Mandatory injunctive relief may be used to require a patient to leave a hospital following a discharge notice. See Midstate Medical Center v. Jane Doe, 49 Conn. Supp. 581

(Conn.App.Ct. 2006); Jersey City Medical Center v. Halstead, 169 N.J.Super 22 (N.J.Super.Ct.App.Div. 1979); Lucy Webb Hayes National Training School for Deaconesses and Missionaries v. Geoghegan, 281 F.Supp. 116 (D.D.C. 1976); In re New York Methodist Hospital, 25 Misc.3d 648 (Sup.Ct. 2009), Wycoff Heights Medical Center v. Rodriguez, 741 N.Y.S.2d 400 (2002); United Health Services Hospitals, Inc. v. J.W., 47 Misc.3d 1202(A) (Sup.Ct. 2013).

15. The Plaintiff is entitled to a permanent mandatory injunction:

- A. The hospital as well as the community will suffer irreparable harm if this injunction is not granted. LMHS is a public acute care facility which is required to provide acute care services to the members of its community. The evidence is clear that by John Doe taking a bed at Lee Memorial Hospital when not in need of acute care, the Defendant's actions are harming LMHS by preventing it from meeting its public duty by the loss of a hospital bed, by adding to overcrowding at its facility, by straining its ability to care for other patients and by potentially harming LMHS accreditation.
- B. There is no adequate remedy at law. Money damages would be an inadequate and inappropriate to remedy the ongoing harm caused by the loss of the scarce medical and monetary resources. Further, there is no source of payment for the ongoing care at Lee Memorial Hospital since John Doe has been ready for discharge. Medicaid will not pay for his care once he is ready for discharge and acute care is no longer medically necessary.

C. There is a substantial likelihood of success on the merits. The case law overwhelmingly supports the use of a mandatory permanent injunction under facts such as in this case.

D. The injunction will serve the public interest because Lee Memorial Hospital is a public hospital that is required to provide care to patients in need of acute care. It is not serving the public needs by using its scarce resources to keep a patient that does not need acute care thereby depriving the public and other needy patients of a bed at Lee Memorial Hospital to meet their acute medical needs.

*(w)*

E. As a public facility, Plaintiff is not required to post a bond.

Accordingly, after due consideration, it is **ORDERED AND ADJUDGED** that:

1. The Plaintiff's Motion for Temporary and Permanent Injunctive Relief is

**GRANTED.**

2. When the next appropriate long term care facility becomes available for John Doe:

A. The Plaintiff shall verify that the facility is appropriate for the care of John

Doe, including that it can provide all services required to adequately maintain John Doe;

B. If the facility is appropriate, the Plaintiff shall notify Jane Doe of the availability of the facility;

C. Jane Doe shall cooperate and timely execute any necessary paperwork for the transfer of John Doe to the available long term care facility regardless of location within the State of Florida; and,

D. If more than one appropriate facility becomes available at the same time, John Doe will be placed in the facility closest to the family unless otherwise directed by Jane Doe.

3. In the event that Jane Doe does not cooperate and/or timely execute any necessary paperwork, this Order shall be authority for the transfer of John Doe by the Plaintiff to the long term care facility.

4. Jane Doe may request the discharge of John Doe to her home or to hospice. However, the Plaintiff will not require a discharge to the home or hospice or unilaterally move John Doe to Hospice. Prior to any discharge to her home, Jane Doe must receive required training to provide proper care for her son and have a safe living atmosphere for her son's medical care. If Jane Doe desires a discharge to the home or hospice, she must do so prior to the time for transfer to the next available long term care facility.

5. Pursuant to Rule 1.610(b), no bond shall be required as the Plaintiff is a political subdivision of the State of Florida.

6. The Court retains jurisdiction to make any findings of fact and conclusions of law that are consistent with the testimony and the evidence.

7. Further, the Court retains jurisdiction to enforce this Order.

**DONE AND ORDERED** this 5 day of May 2016, Lee County, Ft. Myers, Florida.

  
Honorable Elizabeth V. Krier  
CIRCUIT JUDGE

Conformed copies to: **SR**  
Elinor Baxter, Esquire **5-6-16**  
Jane Doe